

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**TANYA DAVIS  
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**PRAIRIE MEADOWS RACETRACK  
& CASINO INC  
PO BOX 1000  
ALTOONA IA 50009-1000**

**Appeal Number: 06A-UI-01166-ET  
OC: 01-01-06 R: 02  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 20, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 16, 2006. The claimant participated in the hearing. Gina Vitritto-Robinson, Employee Relations Manager, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time table games dealer for Prairie Meadows from January 31, 2005 to January 4, 2006. On December 22, 2005, a supervisor observed that the claimant

appeared to be confused, was disoriented at times, made unusual mistakes, and her face was flushed and her eyes glassy. Captain of Security Bill Cromer met with the claimant and asked her to go to the security office and the claimant agreed to do so. Once in the office Captain Cromer spoke to the claimant about her behavior and she explained she was in a car accident earlier in the year and sustained a concussion and also that she suffered from migraine headaches. She told the employer she was taking two medications for headaches at that time and Captain Cromer asked if she would submit to a drug screen and she said yes. The initial test was positive for marijuana and the claimant told the employer she knew marijuana stayed in the system for 30 days but she had not smoked any for approximately one week and never before work. Captain Cromer suspended the claimant and told her she would be contacted by Human Resources. The test sample was split and the employer sent the sample to its certified lab. The physician met with the claimant and explained the test results and asked if she wanted one-half of the split sample retested at a lab of her choice and the claimant declined. The claimant testified that in addition to migraines she was diagnosed with chronic daily headaches and had read that smoking marijuana helped. She did not have a doctor's recommendation stating she should smoke marijuana.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith

errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant admits she smoked marijuana approximately one week before the employer asked her to submit to a drug screen and that she tested positive. The claimant argues that she used marijuana on her own time, when she did not have to work and that she did so to try and relieve headache pain. While the administrative law judge found the claimant's testimony credible, the reason she cited for using marijuana is still illegal and violated the employer's drug policy. Consequently, the administrative law judge must find the claimant's actions constitute disqualifying job misconduct as defined by Iowa law. Benefits are denied.

DECISION:

The January 20, 2006, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

je/s